IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

OP.No. 14700 of 2003(Y)

PETITIONER:

CHINNAMMA XAVIER, VALIYAPARAMBIL VEEDU,
NAYARAMBALAM, ERNAKULAM.

BY ADV. SRI.K.R.B.KAIMAL,
ADV. SRI.B.UNNIKRISHNA KAIMAL.

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, LABOUR & REHABILITATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DISTRICT EXECUTIVE OFFICER, KERALA MOTOR TRANSPORT WORKERS' WELFARE FUND BOARD, PALARIVATTOM, ERNAKULAM.**

3. **THE DEPUTY TAHSILDAR (R.R), TALUK OFFICE, KOCHI.**

4. **THE VILLAGE OFFICER, NAYARAMBALAM VILLAGE, NAYARAMBALAM, ERNAKULAM.**

***ADDL. RESPONDENTS 5 TO 7 IMPLEADED:**

***5. MOHANAN E.R., S/O. RAMAN,**
AGED 47, ILLATHUPARAMBIL HOUSE,
VELIYATHAMPARAMBU (WEST),
NAYARAMBALAM.P.O., KOCHI- 682 509.

O.P. NO. 14700/2003:

***6. M.S. SUNIL, S/O. SUDHAKARAN,**
AGED 35, MAYATTIL HOUSE,
CHERAI .P.O., ERNAKULAM DIST.

***7. V.R. SUDHAKARAN, S/O. RAMACHANDRAN,**
AGED 38, VELITHERIL HOUSE,
OCHANTHURUTH.P.O., KOCHI-682508.

***IMPLEADED AS PER ORDER DATED 09/03/2006 ON I.A. 3422/04.**

BY ADV. SRI.P.RAMAKRISHNAN, SC,KMTWF BOARD,
GOVERNMENT PLEADER SRI. K.V. MANOJ,
ADV. SRI.C.P.SAJI.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 24/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 24635/2003 IN O.P. NO. 14700/2003

DISMISSED

24/08/2007. **SD/- T.R.RAMACHANDRAN NAIR, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE APPEAL DTD. 29/06/1991 SUBMITTED BY THE PETITIONER TO THE R.1.

EXT.P.2: COPY OF THE APPEAL DTD. 25/10/1992 SUBMITTED BY THE PETITIONER BEFORE THE R.1.

EXT.P.3: COPY OF THE APPEAL DTD. 16/06/1994 SUBMITTED BY THE PETITIONER BEFORE THE R.1.

EXT.P.4: COPY OF THE APPEAL DTD. 10/09/1995 SUBMITTED BY THE PETITIONER BEFORE THE R.1.

EXT.P.5: COPY OF THE APPEAL DTD. 05/04/2002 SUBMITTED BY THE PETITIONER BEFORE THE R.1.

EXT.P.6: COPY OF THE ORDER NO. G.O. (RT). NO. 440/2003/LBR DTD. 05/02/2003.

EXT.P.7: COPY OF THE ORDER NO. G.O. (RT). NO. 439/2003/LBR DTD. 05/02/2003.

EXT.P.8: COPY OF THE DEMAND NOTICE NO. A2-3871-03 DTD. 17/04/2003 ISSUED BY THE R.3.

EXT.P.9: COPY OF THE DEMAND NOTICE NO. A2-3871-03 DTD. 17/04/2003 ISSUED BY THE R.3.

EXT.P10: COPY OF THE DEMAND NOTICE NO. A2-3872-03 DTD. 17/04/2003 ISSUED BY THE R.3.

EXT.P.11: COPY OF THE DEMAND NOTICE NO. A2-3872-03 DTD. 17/04/2003 ISSUED BY THE R.3.

EXT.P.12: COPY OF THE DEMAND NOTICE NO. A2-3897-03 DTD. 17/04/2003 ISSUED BY THE R.3.

O.P. NO. 14700/2003:

EXT.P.13: COPY OF THE DEMAND NOTICE NO. A2-3897-03 DTD. 17/04/2003 ISSUED BY THE R.3.

EXT.P.14: COPY OF THE DEMAND NOTICE NO. A2-3876-03 DTD. 17/04/2003 ISSUED BY THE R.3.

EXT.P.15: COPY OF THE DEMAND NOTICE NO. A2-3876-03 DTD. 17/04/2003 ISSUED BY THE R.3.

EXT.P.16: COPY OF THE DEMAND NOTICE NO. A2-3875-03 DTD. 17/04/2003 ISSUED BY THE R.3.

EXT.P.17: COPY OF THE DEMAND NOTICE NO. 12-3875-03 DTD. 17/04/2003 ISSUED BY THE R.3.

//TRUE COPY//

prv.

T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 14700 of 2003-Y.

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Dated this the 24th day of August, 2007.

J U D G M E N T

The petitioner is aggrieved by the orders issued by the Government in appeal which are produced as Exts.P6 and P7 and also the demand notices issued for recovering the various amounts covered by them.

2. The petitioner is the owner and operator of a stage carriage having registration No.KCF 9448 (formerly KLO 4055) from 1987 onwards. According to her, she had employed only few casual workers for the operation of the vehicle and she had been remitting contribution to the Kerala Motor Transport Workers Welfare Fund.

3. Exts.P1 to P5 are the appeals filed by the petitioner respectively for the years 1987-'88, 1988-91, 1991-92, 1992-93 and for the period covering 1995. The appeals were disposed of by Exts.P6 and P7 orders.

4. The learned counsel for the petitioner contends that the calculation of the amounts due towards the fund is vitiated by various illegalities and irregularities. It is mainly contended that the overtime wages have been included which going by the scheme cannot be reckoned for the

purpose of calculation. It is also contended that various grounds in the appeals have not been answered by the Government, especially the grounds in Ext.P5 appeal that certain persons have not actually worked and in respect of certain other persons they had worked only for a period of less than two months. The said contentions are disputed by the learned counsel for the respondents.

5. The petitioner has not placed on record the objection filed before the authority concerned in this writ petition. At any rate, there is a finding in the appeals that no documentary evidence were produced by the appellant in respect of the grounds stated in the appeals before the authority when the enquiry was being conducted. Therefore, the contention that the appeals have been disposed of without application of mind does not appear to be correct. If the petitioner had such a case as pleaded now it should have been raised before the appellate authority or the original authority as the case may be, and invited a decision on them. Instead of doing so, it is a futile exercise to complain about the same now. Hence the orders under challenge are upheld.

6. If the petitioner remits the balance amount demanded in five monthly instalments from the month of September onwards, the revenue recovery proceedings will be kept in abeyance. The instalments shall be paid before the 15th of every month and the last instalment should cover the entire

balance amount. In case of default of two consecutive instalments the respondents can initiate recovery proceedings in accordance with law. The writ petition is dismissed with the above observations. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-